

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

AZTEC OIL & GAS, INC. and
AZTEC ENERGY, LLC

Debtors.¹

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Chapter 11

Case No. 16-31895

Jointly Administered

AZTEC OIL & GAS, INC. and
AZTEC ENERGY, LLC
Plaintiffs

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Removed from Case No. 4:15-cv-00866
in the Southern District of Texas, Houston
Division

VS.

FRANK FISHER, ROBERT SONFIELD
L. MYCHAEL JEFFERSON, II.,
LIVINGSTON GROWTH FUND
TRUST, and INTERNATIONAL FLUID
DYNAMICS

Defendants.

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ADV. PROC. NO. _____

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Debtors' Aztec Oil & Gas, Inc. and Aztec Energy, LLC (with the jointly administered co-debtors, the "Debtors"), who is the Plaintiff in the above-entitled federal civil action, which files this Notice of Removal for the action styled *Aztec Oil and Gas, Inc. and Aztec Energy, LLC v. Frank Fisher, Robert Sonfield, L. Mychael Jefferson, II, Livingston Growth Fund*

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Aztec Oil & Gas, Inc. (1902), Aztec Drilling & Operating, LLC. (7258), Aztec Operating Company (4057), Aztec Energy, LLC (8806), Aztec VIIIB Oil & Gas, LP (3613), Aztec VIIIC Oil & Gas, LP (2901), Aztec XA Oil and Gas, LP (9594) Aztec XB Oil & Gas, LP (3054) Aztec AC Oil & Gas, LP (7949), Aztec XI-A Oil & Gas, LP (7413), Aztec XI-B Oil & Gas, LP (7635), Aztec XI-C Oil & Gas, LP (9282), Aztec XI-D Oil & Gas, LP (2485), Aztec XII-A Oil & Gas, LP (8525), Aztec AII-B Oil & Gas, LP (9158), Aztec AII-C Oil & Gas, LP (8976), Aztec Comanche A Oil & Gas, LP (8651) and Aztec Comanche B Oil & Gas, LP (3795).

Trust, and International Fluid Dynamics, Case No. 4:15-cv-00866, pending in the United States District Court for the Southern District of Texas, Houston Division (“Federal Court Action” or “Removed Case”) to the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

1. Pursuant to 28 U.S.C. §1452(a) and Fed. R. Bankr. P. 9027, Debtors file this Notice of Removal (“Removal”) in the United States Bankruptcy Court for the Southern District of Texas, as the Federal Court Action is pending in this District.

2. The Removed Case is related to the captioned bankruptcy case.

3. Pursuant to 28 U.S.C. §1452(a), the Removed Case may be removed to this Court.

4. After the Notice of Removal is filed with the clerk of the Court, “the court **shall proceed no further** unless and until the case is remanded.” 28 U.S.C. §1446(d) (emphasis added).

5. Pending transfer of other disposition of this removed adversary proceeding, the Federal Court has no jurisdiction over the removed case.

6. Jurisdiction of this case arises under 28 U.S.C. §1334 and 11 U.S.C. §§ 105 and 541. The Removed Case is a civil action other than a proceeding before the Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power. As grounds for this Removal, Debtors respectfully submit the following:

VENUE

7. Venue is proper in this District and Court under 28 U.S.C. § 1441(a) because the federal court where the suit was filed is located in this District.

THE REMOVED ACTION

8. In April 2015, Debtors Aztec Energy and Gas, Inc. and Aztec Energy, LLC initiated the Removed Case against Defendants in the United States District Court for the Southern District of Texas, seeking damages for Defendants related to securities fraud, breach of fiduciary duty, fraud, aiding and abetting, conspiracy, and attorney malpractice. Defendants have asserted counterclaims and allege the ability to take actions on behalf of the companies. Since the filing of the Removed Case, certain of the Defendants, entities they control, and others acting with the Defendants initiated lawsuits against the Debtors, their officers and directors, and others. These lawsuits include

- *Creditsuisse, Ltd. v. Aztec Oil and Gas, Inc., Aztec Drilling & Operating, LLC, Trek Energy Corp. and Trek Partners, LLC*, Cause No. 2016-20776 in the 269th Judicial District Court of Harris County, Texas;
- *Franklin C. Fisher, Jr. and CSI Energy, LP v. Aztec Oil & Gas, Inc. and Aztec Drilling & Operating, LLC*, Cause No. 2015-76491 in the 129th Judicial District Court of Harris County, Texas;
- *Franklin C. Fisher, Jr., an individual and Livingston Growth Fund Trust v. Aztec Oil & Gas, Inc., and entity, DOES I through X, inclusive, and ROE ENTITIES XI through M, inclusive*, Case No. A-15-724127-C, Dept. No. XIII in the District Court of Clark County, Nevada;
- *Fort Apache Energy, Inc. vs. Resaca Resources, LLC, Aztec Drilling & Operating, LLC, vs. Harry G. Hrvnatz, Jr., Allan P. Bloxsom, III, and Southern Star Exploration, LLC*, Case No. 22,494-B in the 88th Judicial District Court of Tyler County, Texas.

9. Through the litigation, Defendants and their affiliates have sought to circumvent the original case filed in Federal Court by seeking default judgments and an Order in Nevada State Court to compel the Debtors to hold a shareholder meeting and take control of the Debtors. The Debtors maintain that Defendants super-priority Series A preferred shares were fraudulently obtained and are invalid.

10. The above litigation is currently pending in various federal and state courts and resolution of the disputes is not expected in the near term. This cloud of litigation has significantly impacted the Debtors. Litigation costs have averaged, at times, up to \$20,000 per month and are expected to continue at this level or more. Further, prior to the litigation, Debtors attempted to create financial statements, liquidate some assets and raise capital to re-list with the Securities and Exchange Commission and FINRA. However, the commencement of litigation has created a cloud as the control of the company and its assets which much be resolved for the company to either reorganize or sell its assets, thereby prompting the filing of this bankruptcy case.

RELATION OF THE REMOVED ACTION TO THE BANKRUPTCY CASE

11. Aztec Oil and Gas, Inc. and Aztec Energy, LLC, along with 16 other affiliated subsidiaries (the “Debtors”) filed voluntary chapter 11 petitions on April 13, 2016, commencing a complex reorganization case (the “Chapter 11 case”) which is pending before this Court. The Debtors are operating as a debtor-in-possession pursuant to 11 U.S.C. §§ 1101, 1107, and 1108.

12. At the time of the commencement of the Chapter 11 case, the Federal Court Action was still pending before the Southern District.

13. All such claims and causes of action in the Federal Court Action have a clear and direct impact on interests and property of the estate under 11 U.S.C. § 541. Resolution of the claims asserted in the Federal Court Action will significantly affect the administration of the estate and the equity security holders relationship which are core proceedings under 28 U.S.C. §157. In the event that any claim or cause of action asserted in the Federal Court Action is determined to be non-core, the Debtors consent to the entry of final orders or judgments by the bankruptcy judge.

14. This Notice of Removal is timely as it is filed less than ninety (90) days after the order for relief in the Chapter 11 case. As mentioned above, the Federal Court Action was pending when the Chapter 11 case commenced. Removal of each claim and cause of action of the Federal Court action to the Bankruptcy Court is authorized by 28 U.S.C. §§ 1452 and 1334.

BANKRUPTCY JURISDICTION

15. Removal is proper pursuant to this Court's bankruptcy jurisdiction, as authorized by 28 U.S.C. § 1334(b), which provides that federal district courts have "original jurisdiction of all civil proceedings...arising in or related to cases under title 11." Cases subject to such jurisdiction are removable under the authority of 28 U.S.C. § 1452, which states that "[a] party may remove any claim or cause of action...to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." The District Court has a standing order of reference to the Bankruptcy Court.

16. The Federal Court Action "arises in" and/or "relates to" the Chapter 11 case as the Federal Court Action is inextricably linked to the bankruptcy because it could result in findings or rulings that affects the control and management of the debtors which is critical to the administration of the Debtors' estate, equity interests in the Debtors, and/or could lead to inconsistent findings with the bankruptcy court or other pending litigation. For these reasons, removal is proper.

17. In the Fifth Circuit, if an action could "conceivably have any effect on the estate being administered in bankruptcy, the Bankruptcy Court has "related to" jurisdiction over the action." *Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987). In the present case, the Federal Court Action could affect the bankruptcy and, therefore, it is appropriate for this Court

to exercise “related to” jurisdiction.

PLEADINGS OF STATE COURT ACTION

18. True and correct copies of all process and pleadings filed in this action are attached hereto. A copy of the notice will be filed with the Federal Court without exhibits.

RESERVATION

19. No admission of fact, law or liability is intended by this Notice of Removal, and all defenses, motions, counterclaims, and pleas are expressly reserved.

NOW THEREFORE, all parties are hereby notified to proceed no further in the Federal Court Action styled as *Aztec Oil and Gas, Inc. and Aztec Energy, LLC v. Frank Fisher, Robert Sonfield, L. Mychael Jefferson, II, Livingston Growth Fund Trust and International Fluid Dynamics*, Case No. 4:15-cv-00886, pending in the United States District Court for the Southern District of Texas, Houston Division and the Debtors further request any other relief the Court deems just and equitable.

Dated: May 17, 2016.

Respectfully Submitted,

CHRISTIAN, SMITH & JEWELL, LLP

//s// Kristin N. Rhame
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BANKRUPTCY ATTORNEYS FOR
PLAINTIFF DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal has been served on counsel for the Defendants, the U.S. Trustee and all parties receiving notice through CM/ECF and the Southern District of Texas CM/ECF on this 17th day of May, 2016.

Robert Corn
The Lyric Centre
440 Louisiana, Suite 2000
Houston, Texas 77002-1636

//s// Kristin N. Rhame

KRISTIN N. RHAME